

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PACIFIC NORTHWEST MOTOR FREIGHT
LINES, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-96

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties, arises from the alleged violation (airborne dust) of Section 9.15(c) of respondent's Regulation I. The hearing was held before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, convened at Seattle, Washington on May 30, 1978. Member Chris Smith has read the evidence in the proceeding. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant, Pacific Northwest Motor Freight Lines, Inc., appeared by and through its President, L. H. Doolittle. Respondent appeared by

1 and through its attorney, Keith D. McGoffin. Olympia reporter Susan
2 Cookman recorded the proceedings.

3 Having heard the testimony or read the transcript, having reviewed
4 the exhibits, and being fully advised, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this
9 Hearings Board a certified copy of its Regulation I containing
10 respondent's Regulation I and amendments thereto of which official
11 notice is taken.

12 II

13 Pacific Northwest Motor Freight Lines, Inc., the appellant, operates
14 a truck-trailer storage yard at 600 South Edmunds Street in the central
15 area of Seattle. Appellant leases, rather than owns, the land at that
16 location. Although there is a thin covering of blacktop on the yard, or
17 portions of it, the upper surface consists of dirt. Sweeping this dirt
18 might cause more of it to become airborne than would result without
19 sweeping, and rains often hamper sweeping operations. Watering the yard
20 would suppress airborne dust but inadequate slope for drainage combined
21 with the absence of sewers in the vicinity of the yard militates against
22 this precaution. Oiling the yard would suppress airborne dust, if
23 performed regularly, and oiling is within the appellant's capability.

24 III

25 On March 21, 1978, Puget Sound Air Pollution Control Agency,
26 the respondent, received a complaint of airborne dust arising from the

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1 appellant's operations in its storage yard. The complainant was an
2 employee of the Golden Grain Macaroni Company which is adjacent to the
3 appellant's location. Respondent dispatched its inspector to the
4 site and he observed tractor-trailer traffic entering and leaving the
5 storage yard and raising dust from the surface of the yard upwards
6 some 100 feet into the air. The inspector issued a Notice of Violation,
7 by mail, which was received by appellant on March 24, 1978. Respondent
8 then issued a Notice and Order of Civil Penalty, by mail, received
9 by appellant on April 5, 1978. This Notice cited Section 9.15(c)
10 of respondent's Regulation I and assessed a civil penalty of \$250.

11 On April 10, 1978, the respondent received another complaint from
12 Golden Grain Macaroni Company that airborne dust was arising from
13 appellant's operations in its storage yard. Upon his arrival,
14 respondent's inspector observed airborne dust from truck traffic on
15 appellant's yard, in the same quantities as before. On both this
16 date and previously, on March 21, 1978, the airborne dust seen by the
17 inspector fell onto cars parked along Sixth Avenue. The inspector
18 issued a Notice of Violation and this was followed by assessment of a
19 \$250 civil penalty as before.

20 From these two \$250 civil penalties, appellant appeals.

21 IV

22 Appellant, Pacific Northwest Motor Freight, Inc., was the subject of
23 complaints about airborne dust from the same yard, during 1974.
24 Respondent did not cite appellant at that time but only cautioned
25 against further incidents and left with appellant a copy of
26 respondent's airborne dust and other regulations.

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1 Appellant has made firm arrangements to suppress airborne dust by
2 oiling the storage yard in the near future.

3 V

4 Any Conclusion of Law which should be deemed a Finding of Fact is
5 hereby adopted as such.

6 From these Findings, the Pollution Control Hearings Board comes
7 to these

8 CONCLUSIONS OF LAW

9 I

10 Subsection 9.15(c) of respondent's Regulation I, which is alleged
11 in the Notices and Order of Civil Penalty now on appeal, provides:

12 (c) It shall be unlawful for any person to cause or
13 permit untreated open areas located within a private lot or
14 roadway to be maintained without taking reasonable
precautions to prevent particulate matter from becoming
airborne.

15 The respondent's definition of "particulate matter" is "any material
16 . . . that is or has been airborne and exists as a liquid or solid at
17 standard conditions." Subsection 1.07(w). This definition therefore
18 includes airborne dust.

19 Respondent proved a prima facie violation by showing that airborne
20 dust, from a private lot under appellant's control, could be seen.
21 From that a legitimate inference can be made that "reasonable precautions"
22 were not taken. The burden of proceeding or going forward with the
23 evidence, at that point, is upon appellant to prove that it had taken
24 "reasonable precautions" to prevent dust from becoming airborne.

25 Weyerhaeuser Company v. Puget Sound Air Pollution Control Agency,
26 PCHB No. 1076 (1977); Kaiser Aluminum Company v. Puget Sound Air

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Pollution Control Agency, PCHB Nos. 1079 and 1085 (1977), and Boulevard
Excavating, Inc. v. Puget Sound Air Pollution Control Agency, PCHB
No. 77-69 (1977). Appellant failed to carry that burden in this appeal
since it offered no evidence that it had taken any precautions to prevent
airborne dust on the dates in question. Oiling the yard, furthermore,
constitutes a reasonable precaution to prevent airborne dust. Appellant,
Pacific Northwest Motor Freight, Inc., therefore violated Subsection
9.15(c) of respondent's Regulation I, on March 21, 1978 and again on
April 10, 1978.

II

Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

From these Conclusions, the Board enters this

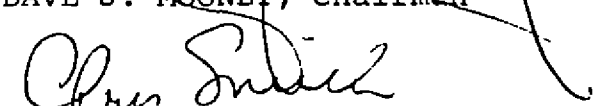
ORDER

The violations and two \$250 civil penalties (total \$500) are each
affirmed against appellant, Pacific Northwest Motor Freight, Inc.;
provided, however, that \$150 of each civil penalty (total \$300) is
suspended on condition that appellant not violate respondent's
regulations for a period of one year from the date of appellant's
receipt of this Order.

DONE at Lacey, Washington, this 3d day of July, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER